

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILBER OSWALDO PENATE GONZALEZ,

Docket #: 1:22-cv-5542

Respondent,

against

THE STOP & SHOP
SUPERMARKET COMPANY LLC,

Petitioner.

-----X

PETITION FOR REMOVAL

Defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC (hereinafter "STOP & SHOP") petitioners for the removal of this action from the Supreme Court of the State of New York, County of Kings, to the United States District Court, Eastern District of New York, respectfully demonstrates to this Honorable Court the following:

1. Plaintiff, WILBER OSWALDO PENATE GONZALEZ (hereinafter "Plaintiff"), commenced an action on November 1, 2021, against Defendant STOP & SHOP in a civil action commenced in the Supreme Court of the State of New York, County of Kings based upon the situs of the alleged incident entitled:

SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILBER OSWALDO PENATE GONZALEZ,

Index No.: 527935/2021

Plaintiff,

-against-

THE STOP & SHOP SUPERMARKET
COMPANY LLC and JANE DOE (first
and last name being fictitious and unknown),

Defendants.

-----X

2. A copy of the Summons and Complaint in this matter is annexed hereto as **Exhibit "A"**. STOP & SHOP timely interposed their Answer on November 17, 2021, a copy of which is annexed hereto as **Exhibit "B"**.
3. Despite multiple requests for a response to interrogatories as well as a response to a particularized demand pursuant to New York CPLR Section 3017(c) both of which were included with the Answer, Plaintiff has refused to comply. Annexed hereto as **Exhibit "C"** are copies of said correspondence from our office seeking compliance. Of note, is that New York CPLR Section 3017(c) requires a response to be served within fifteen (15) days of a demand being made.
4. This is an action of a civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the Plaintiff and the Defendant, STOP & SHOP, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. Accordingly, there exists jurisdiction in the District Court of the United States as provided in 28 U.S.C. §1332.
5. Under the provision of 28 U.S.C. §1441, the right exists to remove this civil action. In his complaint, Plaintiff states he is a resident of Queens County (see Exhibit "A" at paragraph "1". Further, Plaintiff alleges that this incident arose in Kings County and specifically at 1009 Flatbush Avenue, Brooklyn, NY which is a Stop & Shop Supermarket (see Exhibit "A" at paragraphs 51 and 53).
6. The action involves a controversy between citizens of different States. The Plaintiff is a citizen of Queens County. The Defendant STOP & SHOP is a foreign limited liability company with its sole member being Ahold Delhaize U.S.A., Inc. Ahold Delhaize U.S.A., Inc. is domiciled in, and hence a citizen of the State of Delaware under whose laws it was founded and operates and has its principal place of business in the Commonwealth of Massachusetts. Annexed hereto as **Exhibit "D"** are printouts from the New York State Department of State memorializing their status.

7. Upon information and belief, Plaintiff's alleged amount in controversy to be claimed will exceed the \$75,000.00 threshold. Plaintiff's complaint did not specify the amount of damages, as pursuant to New York CPLR Section 3017(c), a plaintiff is not permitted to assert a damages amount in a personal injury action.
8. Our office has received medical records through authorizations tendered by Plaintiff. Excerpts of those records are annexed as **Exhibit “E”**.
9. The excerpted records identify the Plaintiff and indicate that Plaintiff has and is continuing to receive treatment for: a right shoulder injury which includes a labral tear, partial rotator cuff tear, synovitis, tenosynovitis, bursitis, and adhesions which necessitated an arthroscopic surgery; a left shoulder injury; and has been out of work for at least five months as a result of this incident which is alleged to have occurred due to the June 28, 2021 incident.
11. Under James v. Gardner, 04-CV-01380 (E.D.N.Y.2004), the Court found that medical records alleging: a disc herniation, bulging disc, central disc herniation, tear of the mid to distal Achilles tendon, partial tear of the anterior horn of the medial meniscus, partial tear of the posterior horn of the lateral meniscus, synovitis of the knee, and chondromalacia of the lateral tibial condyle were sufficient. Under 28 U.S.C. §1446(c)(B) “removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a)”.
10. While the foregoing is expressly denied by the Defendant STOP & SHOP, based on the allegations, the claimed amount in controversy will exceed \$75,000.00. Accordingly, there exists original jurisdiction in the District Courts of the United States of America as provided under 28 U.S.C. §1332.

11. The instant petition is being timely filed upon learning that the amount in controversy will exceed \$75,000.00 and diversity of citizenship exists between the parties as set forth under 28 U.S.C. §1446.
12. Further, this action is being petitioned for removal within one year of commencement of the action pursuant to 28 U.S.C. §1446.
13. In accordance with the requirements of 28 U.S.C. §1446, Defendant STOP & SHOP attaches herewith and incorporates by reference copies of the following items served and/or received in this action as the following Exhibits:
 - A. Plaintiff's Summons and Complaint;
 - B. Defendant STOP & SHOP's Answer and Demands;
 - C. Correspondence regarding outstanding discovery directed to Plaintiff;
 - D. Printouts from the New York State Department of State regarding Defendant STOP & SHOP's citizenship status;
 - E. Excerpted and redacted portions of Plaintiff's medical records received; and
 - F. A copy of the proof of filing of this petition to remove with the Clerk of the Court for the Supreme Court of the State of New York, County of Kings.
14. By reason for the foregoing, the Defendant STOP & SHOP desires and has demonstrated entitlement to have this action removed from the Supreme Court of the State of New York, County of Kings to the United States District Court for the Eastern District of New York, as this incident occurred within said District.
15. Concurrent, with the filing of service and Petition for Removal, Defendant STOP & SHOP is serving this Petition for Removal upon Plaintiff through his attorneys, and filing a Notice of Removal upon the Clerk of the Court for the Supreme Court of the State of New York, County of Kings. Annexed hereto as **Exhibit "F"** is a copy of the filing.

WHEREFORE, Defendant THE STOP & SHOP SUPERMARKET COMPANY LLC, prays that the Petition for Removal be granted and the above-entitled action now pending against them in the Supreme Court of the State of New York, County of Kings be removed to the United States District Court for the Eastern District of New York.

Dated: Mineola, New York
September 16, 2022

THE STOP & SHOP
SUPERMARKET COMPANY LLC

By: *Sasha Shafeek*
SASHA SHAFEEK [SS6348]
TORINO & BERNSTEIN, P.C.
Attorney for Defendant
200 Old Country Road, Suite 220
Mineola, NY 11501
(516) 747-4301 Fax: (516) 747-5956

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this September 16, 2022, to GAMBONE LAW GROUP, PLLC, 8652 Woodhaven Boulevard, Queens, New York 11421, and emailed to kvelez@gambonelawgroup.com and agambone@gambonelawgroup.com.

Sasha Shafeek
SASHA SHAFEEK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Docket #: 1:22-cv-5542
WILBER OSWALDO PENATE GONZALEZ,

Plaintiff,

against

THE STOP & SHOP
SUPERMARKET COMPANY LLC,

Defendant.

-----X

REMOVAL PETITION

TORINO & BERNSTEIN, P.C.

Attorneys for Defendant
THE STOP & SHOP SUPERMARKET COMPANY LLC

200 OLD COUNTRY ROAD, SUITE 220
MINEOLA, NEW YORK 11501
<516> 747-4301 Fax: <516> 747-5956

Our File Number: 001000039074901